MELVIN HELIT

IBLA 2001-236 Decided July 25, 2002

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claim CAMC 151445 null and void ab initio.

Affirmed.

1. Mining Claims: Location

As a general rule, a mining claimant must file with BLM a copy of his notice or certificate of location, including a description of the location of the mining claim sufficient to locate the claimed lands. A mining claimant bears the burden of showing that the mining claim is positioned as asserted.

2. Mining Claims: Location--Mining Claims: Placer Claims

Where an association of eight individual claimants locates a placer mining claim in excess of 160 acres and declines to amend the location, the inclusion of excess acreage may be construed as intentional and the claim may be declared null and void ab initio.

APPEARANCES: Melvin Helit, Oceanside, California, pro se; Leroy Mohorich, Chief, Branch of Energy and Minerals Science, California State Office, Bureau of Land Management, Sacramento, California.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Melvin Helit has appealed from a March 6, 2001, decision of the California State Office, Bureau of Land Management (BLM), declaring the E-ABLE 9 placer mining claim, CAMC 151445, null and void ab initio. According to the decision, the location notice for the mining claim describes a 14,300 foot long "shoe-string" claim comprising 197 acres. BLM took its action because appellant refused to reconcile the location notice and accompanying map to define the claim boundary within the statutory limitations.

The E-ABLE 9 claim was located by A-ABLE Plumbing, Inc., Paul Helit, Paula Helit, Melvin Helit, Michael Regan, Carmen Regan, Robert Gonzales, and Marco Gonzalez on March 24, 1984. The location notice, a completed standardized form for placer mining claims, was recorded with BLM on June 8, 1984. The information supplied states that the claim is situated within the SW1/4 and SE1/4 of sec. 17, the NE1/4, NW1/4, SW1/4, and SE1/4 of sec. 20, and the NE1/4 of sec. 29, T. 29. S., R. 38 E., Mount Diablo Meridian, Kern County, California. The notice also states that the claim contains 160 acres. The discovery monument is positioned "[s]tarting at center of sec. 17 going west to center of canyon then SSE 2800' in sec. 20, north center, T. 29S R. 38E, M.D.M. with the claim encompassing 300' each side of canyon."

In response to "Statement Number 5" on the Location Form: "If claim cannot be described by quarter section, the boundaries of the claims and the land taken are described as follows:", the claimants provided the boundary description by filling in the blanks as follows:

> Commencing at the NORTH END OF CLAIM [1/], thence NE to the NE corner which is the point of the beginning to describe the boundaries,
> thence S-SE 12000' feet to the SE corner,
> thence WEST 600' feet to the SW corner,
> thence N-NORTHWEST 12000' feet to the NW corner,
> thence EAST 300' feet to the point of beginning.

A map attached to the location notice depicts the E-ABLE 9 claim as a long polygon with 7 segments extending along the Last Chance Canyon entirely through sec. 20 and substantial portions of secs. 17 and 29. The polygon depicted on the map bears little resemblance to the rectangle described in the notice, which does not fully close.

On August 24, 1995, BLM sent a notice to the claimants advising them that the California Desert Protection Act (CDPA), 108 Stat. 4471, had been signed into law on October 31, 1994, and that it required BLM to convey 16,500 acres of land in the area of the subject claim to the State of California. The notice explained that BLM had reviewed the documents received for the E-ABLE 9 mining claim to ensure that the lands entered by the claimants would not be included among those lands to be transferred to the State. However, BLM advised it could not determine the claim's exact location. BLM concluded:

> [The location notice] shows approximately one hundred and sixty acres, but the map submitted depicts approximately three hundred and sixty acres * * *.
>
> It is incumbent upon you to make a reasonable attempt to describe the exterior limits of your E-Able 9 mining claim so that it

1/ The phrase "NORTH END OF CLAIM" was substituted for the original wording: "discovery monument where this notice is posted" which the claimant erased.

> conforms to the Public Land Survey System, using aliquot part (legal subdivisions) descriptions, e.g., SW1/4SW1/4SW1/4, etc. Placer mining claims may be described in no less [than] 10-acre tracts.
>
> * * * * * * *
>
> Even if we agreed (and we do not) that you could meet the provisions of 43 CFR 3842.1-5(b), that allows for non-conformity of the public land survey system, your description does not meet the requirements of 43 CFR 3833.1-2(b) * * *, which requires "such accuracy as will permit [BLM] to identify and locate the claims or sites on the ground." It is impossible to follow your metes and bounds description to accurately trace your claims on the 7½" topographic map. Furthermore, a person of ordinary prudence could not follow your description given in your location notice and expect to locate this claim on the ground.

BLM directed the claimants to regulations at 43 CFR 3842.1 and 3842.1-3 governing location of placer mining claims, and at 43 CFR 3833.1-2 governing recordation, and advised that the "claim needs to be correctly described by aliquot parts to the nearest 10 acre tract. This situation can be corrected with an amended location notice." BLM provided the claimants with 30 days in which to amend the location notice of this claim.

On September 8, 1995, Melvin Helit responded, asserting: "No amendment needs to be filed according to law." He stated that the location notice "shows that the claim is 12,000 feet long North to South and 600 feet wide, which is about 160 acres." Helit submitted an enlarged copy of a map similar to the one provided in 1984, arguing that the claim can be identified by measuring "300 feet from center of canyon East and 300 feet from center of canyon West and 12,000 feet North and South." The polygon depicted on the enlarged map has written notations of "600'" next to the northern boundary and the southern triangulation. Along the eastern boundary, the notation reads "12000'." Helit also attached copies of five unrelated pages from assorted articles, regulations and legal annotations which he contends "supports our claim - Gulch Placers - Lack of conformity - Oversized Placer Claims - Boundaries Traceable, etc."

On August 6, 1997, BLM received from Helit a document seeking to subdivide the subject mining claim. An accompanying notice of location for a new 80-acre placer claim (E-ABLE 9LG), to be created from the northern half of E-ABLE 9, was filed with BLM and the serial number CAMC 272166 was assigned. Subsequently, in an undated letter received by Helit on September 15, 1997, BLM informed the claimants that the transfer, lacking signatures from all the claimants, was ineffective and therefore the recordation was void. On September 19, 1997, a mineral deed and location notice signed by all claimants was filed which sought to subdivide the claim and create the E-ABLE 9LG placer

mining claim. This filing was serialized as CAMC 272303. Helit sought to transfer CAMC 272303 to Loyd Gattenby. 2/

By memorandum dated February 2, 2001, the Division of Energy and Minerals and the Division of Resources, BLM, jointly requested that the Geographic Services, BLM, "digitize" the stream bed within the Last Chance Canyon. Specifically, the Geographic Services staff was requested to "calculate the length of the stream bed located within Last Chance Canyon" as described on the map furnished by the mining claimants. The memorandum notes that the canyon bed is within the area that was mandated for conveyance to the State of California for the Red Rock Canyon State Park. It explains the basis for the request: "We have written to the claimants of record, asking them to further clarify the location of the mining claim, which they refused to do."

In response, a memorandum dated February 6, 2001, signed by the Acting Chief, Branch of Geographic Services, reported to the Division of Energy & Minerals and the Division of Resources that the E-ABLE 9 mining claim "is calculated to be 14,300 feet long, plus or minus 100 feet, containing approximately 197 acres." This information "was derived from the Bureau of Land Management 100K Digital Line Graphic base data, stored and maintained at the California State Office, Sacramento, California." Attached to the memorandum is a map showing the features and meanders of the canyon, with perimeter lines around an area spanning 600 feet across the canyon's center through the land sections as described in the location notice and maps.

On March 6, 2001, BLM issued its decision declaring the E-ABLE 9 placer mining claim null and void ab initio, based upon the location notice, the digitized map, and the conclusions within the Geographic Services report. BLM concluded that, under 43 CFR 3842.1-2(c), the mining claim improperly exceeded 160 acres. In addition, BLM cited 30 U.S.C. § 35 (2000) and 43 CFR 3842.1-5 for the requirement that placer mining claims conform "as near as practicable to the United States system of public land surveys and the rectangular subdivisions of such surveys." The decision further cites Melvin Helit, 147 IBLA 45 (1998), and Snow Flake Fraction Placer, 37 L.D. 250 (1908), for the principle that "no shoe-string claims should ever receive the sanction of the Department."

In his statement of reasons (SOR), 3/ Helit argues that BLM erred in calculating the placer mining claim as encompassing 14,300 feet in length and 197 acres in total area. However, Helit's several arguments on this point fail to support the notion that the 1984 location notice and map can be reconciled to identify a properly located placer mining claim.

2/ The issue of the Helits' transfer of CAMC 272303 to Gattenby, is not before us. We agree with BLM (Answer at 2-3) that subsequent transfer of a portion of the mining claim has no bearing on whether the E-ABLE 9 claim was properly located. Thus, to the extent any issue regarding Helit's attempt to transfer part of the E-ABLE 9 claim remains open, BLM will make a separate determination consistent with this opinion.

3/ Melvin Helit timely appealed this decision and submitted the SOR on April 6, 2001. BLM forwarded the case record and requested that the case be

[1] The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1994), requires a claim owner to file with BLM a copy of his notice or certificate of location, "including a description of the location of the mining claim * * * sufficient to locate the claimed lands on the ground." The regulations implementing that provision require that

> (i) This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim to within a 160 acre quadrant of the section (quarter section), or sections, if more than one is involved, and the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable.
>
> (ii) The location of the claims or sites shall be depicted on either a topographic map published by the U.S. Geological Survey or by a narrative or a sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic, or man-made feature. Such map, narrative description, or sketch shall set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or mineral interests in such lands to identify and locate the claims or sites on the ground.

43 CFR 3833.1-2(b)(5). We have on occasion stated that because the information provided BLM by a locator is not required to be precise, "[t]he

---

fn. 3 (continued)
expedited. This Board denied the motion to expedite by order dated May 3, 2001. On June 4, 2001, BLM responded to Helit's SOR and also resubmitted a request to expedite. Helit submitted a supplemental SOR on June 15, 2001. Because we now consider the merits of his case, the motion to expedite is rendered moot.

With respect to Helit's argument that BLM's decision violates 43 CFR 3842.1-5 when it makes a determination of conformity to the lines of a public land survey, we agree with BLM (Answer at 2) that Helit misreads the rule. Subsection (d) of 3842.1-5 does not restrict BLM's authority to determine the validity of a mining claim improperly located prior to a patent application being filed. To the contrary, the applicable regulation, 43 CFR 3833.5(f), expressly advises that

"[f]ailure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law."

[Emphasis added.]

See Melvin Helit, 147 IBLA 45, 49 n.2 (1998). The record supports BLM's determination that the claim as located improperly exceeds the allowable acreage.

uses which may be made of [the] information submitted necessarily depend upon its relative accuracy." See Arley Taylor, 90 IBLA 313, 317 (1986), and cases cited. However, for those instances where accuracy is crucial, the claimant has the burden of showing that the claim is positioned as asserted. See Patsy A. Brings, 119 IBLA 319, 327 (1991); The Atchison Topeka & Santa Fe Railway Co. v. Cox, 4 IBLA 279, 282 (1972), aff'd, 566 F.2d 1373 (9th Cir. 1978). The test established for the sufficiency of a recorded mining claim description is whether the claim may be found and identified on the ground by following the recorded description. See 2 American Law of Mining, § 33.09[3] (2d ed. 1984); Ed Nazelrod, 151 IBLA 374, 377 (2000); Arley Taylor, 90 IBLA at 317. The accompanying map, if accurate, should reveal the position of the claim in relation to landmarks, other claims, or corners of the public land survey, and thereby permit BLM to determine the status of the land on which the claim is situated. See John Wright, 112 IBLA 233, 236 (1989).

In this instance, the proper position of the subject mining claim is crucial to BLM's management of the public lands to comply with its mandate to transfer federal land to the State of California. The digitized mapping of the claim was requested in order for BLM to harmonize the location notice and map to identify the land covered by the E-Able 9 mining claim. In his SOR, Helit asks the Board to reverse BLM's determination regarding the location of this claim by rejecting the findings of the digitized analysis. Helit urges the Board to accept his analysis and construction of the supporting documents which he provided in 1984 and 1995. We are not persuaded by Helit's claims that "if you look at both maps you can see that the claim is not longer than 10,000 feet," nor his arguments that the maps show the claim to run 1 mile through Sec. 20 and "less than ½ mile or 2,640 feet for Sec. 17 and Sec. 29." (SOR at 1.)

Examination of the 1984 or the 1995 maps does not support the size or acreage calculations asserted by Helit, nor do they provide a precise identification of the placer claim. Both the 1984 and 1995 maps significantly depart from the location notice. The 1984 map depicts a polygon with a length approximately 6 to 7 times that of its width. Yet, according to the location notice, the placer mining claim is 12,000 feet by 600 feet, or 20 times as long as it is wide. The map draws boundaries around the claim which, upon examination, indicate that the total acreage would include more than half of a section or approximately 320 acres, in direct contrast to the statement in the location notice that the claim embraces only 160 acres. The width of the mining claim on the map comprises one-third of the subject square mile section, which calculates to a claim 1,760 feet wide (5,280 divided by 3), in contrast to the 600-foot (or 300-foot) width identified in the location notice. Further, the map closes the polygon left open in the location notice's boundary description of a rectangle. The 1995 map suffers from the same imperfections.

In addition, Helit's effort to shorten the length of the E-ABLE 9 placer mining claim to 10,000 feet is not sustainable from either the 1984 or the 1995 map. This assertion contradicts the location notice and his own position before BLM in 1995. Both documents identify the placer mining claim as being 12,000 feet in length. Yet, Helit now asserts:

> It looks like the wrong map was sent to BLM in 1995, but that does not change the original 1984 location. The original 1984 location notice states in line 6 the claim "starting at center of Sec. 17." If you look at both maps you can see that the claim is not longer than 10,000 feet, even though it says 12,000 feet in the 1995 map. ADD 1 mile or 5,280 feet for Sec. 20 and less than ½ mile or 2,640 feet for Sec. 17 and Sec. 29, (also in Sec. 29 as you can see the claim narrows with the canyon or gulch, and is not 600 feet wide, a los[s] of about 15 acres), and you get 10,560 feet.

(SOR at 1 (emphasis added).) But, as explained above, even if we were to choose the 1984 map over these shifting contentions, a visual examination of that map does not permit such a conclusion. Helit's mapped polygon is inconsistent with the written description in the location notice that the claim spans a consistent width across the canyon bed.

We find that the claimants, with all the inconsistencies among their documents, clearly failed to meet their burden of showing that the mining claim is positioned as asserted. Under these circumstances, BLM's digitized map provides the most accurate picture of the land claimed under the location notice. The location notice for the E-ABLE 9 placer mining claim, and the digitized map, depict a grossly irregular mining claim at least 12,000 feet in length. By positing the mining claim 600 feet across the actual canyon, as the E-ABLE 9 location notice identifies it, the Geographic Services Report shows the actual claim boundaries winding along the canyon meanders through the portions of secs. 17, 20, and 29 covered by the claim, as depicted in the Helit maps. (Geographic Services Memorandum, February 8, 2001.)

[2] We conclude that the mining claim described by the claimants embraces approximately 197 acres. The mining laws limit the acreage which may be located in a single placer claim to 20 acres for an individual and 160 acres for an association of 8 individuals. See 30 U.S.C. § 36 (2000); 43 CFR 3842.1-2; James F. Burke, 148 IBLA 95 (1999); Melvin Helit, 144 IBLA 230 (1998). As the association of claimants in this case could locate a claim for no more than 160 acres, a location of 197 acres is defective.

Flaws in a location notice's description of a mining claim do not necessarily invalidate the claim. We explained in Melvin Helit, 146 IBLA 362, 368 (1998):

> While it is true that, as a general rule, claimants whose locations either fail to conform to the rectangular system of survey or contain excess acreage are afforded an opportunity to cure these defects prior to a declaration of invalidity (see, e.g., Fred B. Ortman, 52 L.D. 467, 471 (1928) (nonconformity to survey); Samuel P. Barr, Sr., 65 IBLA 167 (1982) (excess acreage)), this rule is not without exceptions. Thus, as we noted in Melvin Helit,[144 IBLA at 233], the right to adjust a claim to delete excess acreage is only available where the inclusion of excess acreage in the first instance was inadvertent. Cf. Waskey v. Hammer, 223 U.S. 85, 90 (1912); Zimmerman v. Funchion, 161 F. 859, 860 (9th Cir. 1908). Herein, as in the previous Helit case, it is clear that the

inclusion of excess acreage was intentional.

Based on the record before this Board, we conclude that the inclusion of excess acreage was not inadvertent. Any doubt concerning that conclusion is removed by the fact that when BLM did offer the opportunity to cure, claimants refused, insisting that their depiction of the claim was a correct representation of their intent. Based on the foregoing, we can only find that the inclusion of excess acreage in this case was intentional and on that basis the claim is properly declared null and void ab initio.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail Frazier
Administrative Judge

ADMINISTRATIVE JUDGE HEMMER CONCURRING SPECIALLY,

I entirely agree with the decision of my colleague but wish to add an additional reason for affirming BLM, given that the issue was raised by BLM in the decision and its Answer. The location notice for the E-ABLE 9 placer mining claim, and the digitized map, depict a grossly irregular mining claim at least 12,000 feet in length, 600 feet across the actual canyon. (Geographic Services Report Map, February 8, 2001.) A similar mining claim was rejected in Snow Flake Fraction Placer (Snow Flake) 37 L.D. 250, 258 (1908), for its irregular and "fantastical" shape. Since 1922, Department regulations have required that BLM refuse to permit or sanction such claims. BLM is correct in concluding, on this basis, that Helit's claim is null and void ab initio.

Helit disputes such a conclusion, arguing that BLM erred in failing to acknowledge that the E-ABLE 9 mining claim is a "gulch placers claim, an issue * * * never * * * addressed by the IBLA." Helit asserts that the decision in Melvin Helit, 147 IBLA 45 (1998), which itself addressed Snow Flake, does not pertain to this matter. (SOR at ¶ 6.) Helit fails to show that the E-ABLE 9 mining claim is a "gulch" placer claim or sustain his description of Board precedent.

The genesis of Snow Flake, subsequent Board precedent and BLM regulation, and their implications for this case, is 30 U.S.C. § 35 (1994), which requires that placer claims "conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys." On the basis of this statutory requirement, the Department in Snow Flake repudiated the location of a single placer claim extending 12,000 feet in length down a long narrow ravine. The Secretary chose that case as the vehicle for resolving a Departmental debate over whether long "shoestring" placer mining claims, spanning a narrow stream bed, would be permitted.

The Board analyzed the history of Snow Flake in United States v. Haskins (Haskins), 59 IBLA 1 (1981), aff'd Civ. No. 82-2112 (C.D. Cal. 1984):

> [T]he Placer Act was amended in 1872 to provide that "all placer-mining claims located after the 10th day of May 1872, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys." 30 U.S.C. § 35 (1976). The critical phrase, of course, is the qualifying "as near as practicable."
>
> As early as the decision in William Rablin, 2 L.D. 764 (1884), the Department recognized that conformity was a question of reasonableness and, therein, expressly recognized that a placer claim along the bed of a river, surrounded by precipitous banks, which stretched 12,000 feet down the riverbed, embracing only a small quantity of

surface ground along the shore, was permissible as a location made in exceptional circumstances. This approach was reaffirmed in Pearsall and Freeman, 6 L.D. 227 (1887).

Subsequently, however, a vast array of differing shapes and forms were entered as placer claims and approved for patent. As a result of this increasing practice, irregular swaths were being carved out of the public domain, thereby making management of such lands as were not patented increasingly difficult. As a result of these practices, the question of conformity was reexamined in a series of cases beginning with the Miller Placer Claim, 30 L.D. 225 (1900), and the Wood Placer Mining Co., 32 L.D. 198 (1903), finally culminating in the Snow Flake Fraction Placer, 37 L.D. 250 (1908).

In Snow Flake Fraction Placer, supra, the First Assistant Secretary examined the history of Departmental adjudication on this question and established a general rule that:

> Whether a placer location conforms sufficiently to the requirements with respect to form and compactness is a question of fact for determination by the land department in the light of the showing made in each particular case, keeping in mind that it is the policy of the government to have all entries, whether of agricultural or mineral lands, as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular and fantastically shaped tracts.
>
> Id. at 250 (syllabus). This constitutes the general rule which has been followed to the present time. See, e.g., Fuller v. Mountain Sculpture, Inc., 314 P.2d 842 (Utah 1957); United States v. Henrikson, 70 I.D. 212, 217-20 (1963); Fred B. Ortman, 52 L.D. 467 (1928).

59 IBLA at 95-97 (footnote omitted).

The Department adopted Snow Flake into regulation. On April 11, 1922, the Department issued Circular 430, 49 L.D. 62. Paragraph 30 specified:

> Claimants should bear in mind that it is the policy of the Government to have all entries * * * as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or

> fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L.D., 250.) [sic]

This regulation remains unchanged today, except as recodified and corrected for punctuation. 43 CFR 3842.1-5(d).

Helit is correct to point out that some long and narrow mining claims are permitted as gulch placer claims. But gulch placers are permitted due to some physical impediment to filing a claim that conforms as closely as practicable to the requirements of 30 U.S.C. § 35. In Haskins, 59 IBLA at 97-98, the Board made clear that "gulch" placers even half the length of the E-ABLE 9 mining claim are permitted only where unusual modes of location are compelled by limiting geologic features.

> Both the Department and the Courts have long recognized that situations occasionally occur wherein a placer claim is located along a ravine, canyon, or gulch, surrounded by precipitous and, in many cases, impassable canyon walls and cliffs, which themselves contain no mineral values, and that in these situations, unusual modes of location may be necessary. Thus, in William F. Carr, 53 I.D. 431 (1931), the Department held proper a placer location over a mile in length which was located in a narrow gulch. Similar results were reached in Wiesenthal v. Goff, 120 P.2d 248, 252 (Idaho 1941), and Steele v. Preble, 77 P.2d 418, 427-28 (Ore. 1938).
>
> The critical factor in validating such locations is the inaccessibility of and lack of mineral values in the confining banks, which, as a practical matter, prevent the claimant from embracing these areas within the location.

59 IBLA at 97-98; see also Seth M. Reilly, 112 IBLA 273, 275 n.2 (1990). The "critical factor" permitting validation as a gulch placer is thus a ravine, canyon, or gulch, surrounded by restrictive physical features.

Helit's problem is that this is not such a case. Neither the location notice nor the map indicates any such critical factor, nor does Helit suggest, or the record support, such an argument. In like circumstances the Board held:

> Clearly, this concept has no relevance to a situation, as is disclosed herein, where the claim actually does embrace the surrounding banks. Having actually located both the stream bed * * * and the surrounding canyon walls, claimant can hardly contend that the unusual shape which resulted was occasioned by the location of a "gulch" placer.

Haskins, 59 IBLA at 98; see also Melvin Helit, 146 IBLA at 368. Thus, Helit's assumption that Board precedent permits irregularly shaped placer mining claims along canyon or ravine beds as "gulch" placers misses the clearly-stated precedent holding that gulch placers are a narrow exception, based on

physical features prohibiting compliance with 30 U.S.C. § 35, to the rule that such claims are not allowed.

Helit's confusion as to whether the issue has "[ever] been addressed" (SOR at ¶ 6), is especially perplexing given the Board's 1998 statement in Melvin Helit, 147 IBLA at 45. There, the Board rejected Helit's effort to classify a 100-foot wide, twelve-mile long placer claim as a "gulch" placer.

> The relevant statute, 30 U.S.C. § 35 (1994), expressly requires that placer claims "shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys." As described in the location notice, this claim has a width of 100 feet and extends more than 12 miles in length. The description of the instant claim, on its face, establishes a per se violation of the statutory requirement. Helit's attempt to justify the location as some sort of "gulch" placer may be summarily rejected. While the Department has, on occasion, allowed some variation from complete conformity with the rectangular system of surveys where the claim has been located in narrow and confining "gulches," it has never, at least not since the decision of the Department in Miller Placer Claim, 30 L.D. 225 (1900), countenanced location of claims in the form exemplified by the location of [the claims at issue]. Indeed, in Snow Flake Fraction Placer, 37 L.D. 250 (1908), the Department went so far as to expressly repudiate a previous decision which had allowed the location of a single placer claim extending 12,000 feet in length. Id. at 258.

147 IBLA at 49-50 (emphasis added).

While the Board described the mining claim there as a "per se violation" of 30 U.S.C. § 35 (1995), which must be "summarily rejected," I agree with BLM that such language compels the conclusion that the mining claim was null and void ab initio for the reasons stated in my concurrence, as well as the reasons stated by my colleague. Any other conclusion would implicitly repudiate the conclusions articulated in that case. Id.

Thus, I would find that "the very nature of the original shape" of the E-ABLE 9 mining placer claim compels affirmance of BLM's decision that the claim is null and void ab initio. See also Haskins, 59 IBLA at 97; Miller Placer Claim, 30 L.D. at 227, Wood Placer Mining Co., 32 L.D. at 200. The placer claim at issue here is a "grossly irregular," and "disproportionate" configuration 12,000 feet long spanning 600 feet across a canyon ravine, 20 times as long as it is wide, such that it "will not be permit[ted] or sanction[ed]." 43 CFR 3342.1-5(d); Snow Flake, 37 L.D. at 259, Haskins, 59 IBLA at 95-96. Any other conclusion on these facts would "permit" or "sanction" the claim in direct contravention of regulations in place now, and since 1922. 43 CFR 3842.1-5(d). My opinion would not define another mining claim as impermissible under the above precedent and rule, because compliance with requirements regarding form and compactness is a question of

fact for determination in light of the showing made in each case. Snow Flake, 37 L.D. at 259.

Turning, finally, to BLM's proffer that Helit amend the mining claim, I would note that corrections may be made by amendment only to an otherwise valid mining claim. 43 CFR 3833.0-5(p); see Daddy Del's L.L.C., 151 IBLA 229, 234-35 (1999), citing Melvin Helit, 110 IBLA 144, 151 (1989) (relocation required under 43 CFR 3833.0-5(q) if amendment not possible because mining claim is void). In Haskins, the Board distinguished between those claims which may be amended or relocated from those which may not, by virtue of their very shape and the lack of justification for it. 59 IBLA at 99. In this case, for the reasons stated above, no such amendment would have been possible for the E-ABLE 9 mining claim. BLM's proffer that Helit amend the claim was not a finding on the facts that he could do so or a statement as to the validity of the mining claim itself. Rather, that finding came after BLM conducted the digitized analysis and found the mining claim to be null and void ab initio. 1/

Conceptually, this case presents the Board with one of the small number of placer mining claims located by virtue of the fact that it spans a ravine or streambed, without conceivable evidence that its shape or extent relates in any way to a geologic or physical impediment. The Department adopted a rule 80 years ago with respect to such claims. If the claimant has no physical reason related to a mineral purpose for locating such a claim, the claimant must suffer the consequence of the claim not being permitted or sanctioned. I believe that the Board may fairly say that such a claim is void ab initio.

`

Lisa Hemmer
Administrative Judge

1/ Helit admits that he could not legally have amended the E-ABLE 9 mining claim without "add[ing] 40 acres of non-mineral land to the original 1984 claim." (SOR at ¶ 7.)